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Traditional Council of Togiak
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Twin Hills Village Council
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Aleknagik Traditional Council
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Portage Creek Village Council
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Chignik Lake Traditional Council
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Chignik Lake, Alaska 99548
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Pilot Point Tribal Council
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February 2, 2018

Hon. Janet Pfleeger, Deputy Director
Federal Permitting Improvement Steering Council
Office of the Executive Director
1800 F Street N.W., Suite 3017
Washington, D.C. 20405

Re: Opposition to PLP's Request to Include Mining as a Covered Project under FAST-41

Dear Deputy Director Pfleeger:

The United Tribes of Bristol Bay (UTBB) is a tribally chartered consortium representing fifteen tribal governments in the Bristol Bay region of Southwest Alaska. Acting as a political subdivision of its member tribal governments, UTBB exercises delegated government powers to represent and convene government-to-government consultation on behalf of its member Tribes on federal and state issues affecting their way of life. UTBB's mission is to protect the lands and waters that support the traditional way of life of the indigenous people of Bristol Bay.

This letter is in regards to the Pebble Limited Partnership's (PLP) recent request to have mining added as a "covered project" under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). UTBB is greatly concerned about the inclusion of mining as a covered project for the purposes of FAST-41. UTBB strongly urges the Federal Permitting Improvement Steering Council (Council) to reject Pebble's request.

Contrary to the assertions made in PLP's request, the Pebble Mine—and mining—is not an infrastructure project and its inclusion as a covered project would be inconsistent with the purpose, intent, and use of FAST-41. Section 4370m(6) defines "covered project as the construction of infrastructure;" mining is an activity, not infrastructure. Similarly, Section 1 of Executive Order 13766 refers to infrastructure projects defined as "electric grid and telecommunications systems, and repairing and upgrading critical port facilities, airports, pipelines, bridges, and highways."

In their *Memorandum for Heads of Federal Departments and Agencies* dated January 13, 2017, the Office of Management and Budget and the Council for Environmental Quality define a range of infrastructure projects as covered projects, none of which include mining, or related sectors (see Sec. 3, pp. 18-19). These identified sectors are consistent with the President's call for a reinvestment in critical and high-priority infrastructure projects across the United States. Mining is an activity, not infrastructure, and is therefore inconsistent with the intent of FAST-41, and mining is NOT listed is

- 4 Section 3.2. Last, “mining” is not a “fossil fuel power plant” in accordance with the table included in Section 3.3 of the Memorandum.

PLP asserts that because individual components of its project could fall under FAST-41 by themselves, then entire project, and thus mining, should be determined a covered project. PLP’s argument misrepresents the purpose of its project. PLP’s project is not about constructing critically needed infrastructure. PLP’s goal is to build a mine; it is not to bring critical infrastructure to rural Alaska. Any effects the mine has to regional infrastructure are merely incidental to PLP’s purpose, limited in scope, and for the benefit of the owners of the mine, not the nation or even the State of Alaska. The Council should not include mining as a covered project solely because PLP will build its own minor, highly limited, infrastructure to support its mining operations. Furthermore, to do so would detract from the very goals of FAST-41 and related Executive Orders, confusing the public, and muddling the important focus on infrastructure critical for the nation.

On December 22, 2017, PLP filed a Clean Water Act permit application with the U.S. Army Corps of Engineers. UTBB expects the Pebble Mine to be vigorously analyzed and reviewed under the National Environmental Policy Act, and other statutes. UTBB and its member Tribes expect to be meaningfully engaged in that process. Changing the rules now would undercut UTBB’s and its member Tribes’ confidences in the regulatory process and the federal government’s legal requirement and commitment to pursue meaningful government-to-government consultation and environmental review. UTBB and its member Tribes are prepared to submit ideas to the Corps regarding studies and information that should be assembled and evaluated, especially traditional cultural knowledge that only tribal governments, communities, and people can provide. UTBB understands that consultation can be a challenging undertaking, especially in Alaska, due to the number of federally recognized tribes, and the remoteness of tribal communities. UTBB would be pleased to assist the Corps with their efforts to conduct meaningful consultation.

Should the Council feel inclined to give PLP’s request further consideration, UTBB and its member tribes expect that the Council will conduct meaningful consultation with UTBB and its member Tribes—indeed, all tribes—about our concerns and the consequences of such action, in a manner consistent with our government-to-government relationship and the Federal trust responsibility. We also encourage the Council to consider the implications of any decision to consider mining a covered project and the hundreds of mines and other extractive activities in nearly every state that would suddenly have to be considered under FAST-41, further diluting and negating the effectiveness, timeliness, and efficiency goals of this Administration.

As a general matter, UTBB does not oppose infrastructure development or the proper use of FAST-41. UTBB and its member Tribes have a unique perspective on the need for investment in critical and high-priority infrastructure; but the Pebble Mine—and mining itself—is not high-priority infrastructure. Including mining as a covered project is inconsistent with the purpose, intent, and use of FAST-41. UTBB therefore strongly urges the Council to reject PLP’s request.

Quyana,



Alannah Hurley, Executive Director
United Tribes of Bristol Bay

Native American Rights Fund

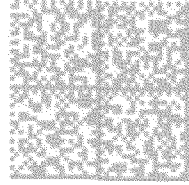
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